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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,178	03/22/2001	Mark Tuomenoksa	7937.0002	2811
22852	7590	08/24/2004		EXAMINER
				FLEMING, FRITZ M
			ART UNIT	PAPER NUMBER
				2182

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/814,178	TUOMENOKSA ET AL.	
	Examiner Fritz M Fleming	Art Unit 2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-44 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.



Fritz M. Fleming
FRITZ FLEMING
PRIMARY EXAMINER
GROUP 2100

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 March 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date separate IDS.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,631,416. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claim 1 is covered by patented claim 1, save the providing by the additional processor. However, this is rendered obvious due to the patented claim 1 preamble reciting the use of the additional processor performing the method, hence the sending is performed by the additional processor. One or more tunnels are established per patented claim 1. Encryption via protocols such as IPSEC is a well-known obvious expedient for obtaining security in data transmissions. Names are set forth in patented claim 1. Consent for tunneling is set forth in patented claim 1. Address ranges are set forth by the patented claim 1 unique addresses routable through a

network. Instant claim 10 is covered by patented claim 3, as both set forth the creation of a total of three tunnels, noting that any information sent after the creation of the tunnels requires that such traverse the tunnels. Mutual consent is determined in the patented claim 3 receiving steps, which are received independently. The third tunnel is eventually formed by the provided virtual addresses of patented claim 3. Firewalls as well as encrypted and encapsulated protocols are well-known expedients, and hence obvious subject matter. Once the third tunnel is set up, no traffic will flow through the first two, per the patented claim 3, as is the routing through the network. The internet of patented claim 5 covers numerous other processors. The routing through the internet to create the tunnels requires the use of gateway connections. Code has to be provided, and downloading is an obvious expedient to do so. Consent and names are set forth at patented claim 3, and information has to go through the tunnels once the tunnels are established. Address ranges have to be accounted for to provide the unique virtual addresses and routable addresses of patented claim 3. Firewalls are well known expedients to selectively restrict network traffic. Creation of the tunnels through an internet per patented claim 5 involves the use of proxy servers. Monitoring is a well-known network function. Instant claim 34 is set forth by patented claim 10, as patented claim 10 adds details of names. The code and memory of instant claims 35 and 36 claims are set forth by the patented claims 1-7, in that the code has to be run in order to perform as patented. Instant claim 37 is set forth by patented claim 3, in that a tunneling interface is set forth by the enabling at patented claim 3, as well as the controller

being set forth by the receiving, determining and sending. The code of claim 38 and memory and code of claim 39 is met by the patented claim 3 method, as the method is carried out by code in the processor-based method. The network of claim 40 is set forth by the patented claims 1 or 3 or 8. Establishing tunnels through the internet involves firewalls and other processors, as such are an inherent part of the internet. Finally instant claims 43 and 44 are set forth by patented claims 8 and 3, noting that the patented claim 3 is a method, obviously carried out by means for doing so.

3. Claims 1-9,34,35,36,40-43 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 09/832,346. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims 1-9,34,35,36,40-43 are directed to a broader network in general, while co-pending claims 1-19 are directed to a more specific virtual network. Otherwise, the two sets of claims refer to the same objectives in different manners, noting that both sets of claims cover encryption, wherein the protocols are obvious subject matter when dealing with network traffic and operations, consent and authentication.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz M Fleming whose telephone number is 703-308-1483. The examiner can normally be reached on M-F, 0600-1500.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 703-308-3301. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fritz M Fleming
Primary Examiner
Art Unit 2182

fmf